

THE DECADES OF OUR
DISCONTENT:
JUDGE J. HARVIE WILKINSON III
REFLECTS ON THE SIXTIES AND
TODAY

by Danielle R. Sassoon

A Review of:
All Falling Faiths: Reflections on the Promise
and Failure of the 1960s, by J. Harvie
Wilkinson III

<https://www.amazon.com/All-Falling-Faiths-Reflections-Promise/dp/1594038910>

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Elegy as genre is alive and well. Nostalgia for bygone times—days of community cohesion and family stability, political courtesy and bipartisan collaboration—is on the rise. Americans of all political persuasions are struggling to diagnose the disease causing civic discourse to degenerate and common social values to atrophy. Judge J. Harvie Wilkinson III's latest book, *All Falling Faiths: Reflections on the Promise & Failure of the 1960s*, is at once another entry in this genre and a more transcendent and intimate work. Part personal reminiscence, part political commentary, Judge Wilkinson's timely memoir traces society's ailments—including what Judge Wilkinson terms the decline of education, the loss of home, and the passing of unity—back to the 1960s, exploring that explosive decade through the eyes of a young man who arrived at Yale after a sheltered upbringing in Richmond, Virginia. Judge Wilkinson's is a voice that rises above the recent chorus bemoaning the decline of American culture, in part by singing a conciliatory and deeply personal tune. Drawing on his experience, while also divulging his regrets, Judge Wilkinson shares his longing for greater national pride and harmony, and reminds us that what unites us is greater than what divides us.

I clerked for Judge Wilkinson on the Fourth Circuit Court of Appeals between 2011 and 2012. As I read *All Falling Faiths*, I recognized the voice of its author—redolent of Southern graciousness and warmth, judicial wisdom and meditation. By delivering his reflections in the form of a memoir, Judge Wilkinson offers more than historical, cultural, or political punditry. At its core, his book is a coming of age story in the tradition of Southern writers like Willie Morris and Thomas Wolfe, and a personal reckoning with the disillusionments that attended growing up in the segregated South. Judge Wilkinson describes an idyllic childhood of privilege in a community anchored by its church, and by a home whose “chief gift was a string of simple words—duty, honor, country, character, courage, trust, and truth.”¹ But a cosseted upbringing gives way to revelations about the inescapable hypocrisy of an honor-bound community still premised on segregation and inequality. In frank prose, Judge Wilkinson admits that, “[s]heltered upbringings produce a surpassing obliviousness, and mine was no exception.”² In his own case, “[i]n the South of the 1950s, that obliviousness extended above all to matters of race. . . . [t]he routines of childhood fended off introspection and induced benign acceptance.”³

But Wilkinson departs Virginia for Yale as civil rights leaders were making substantial inroads on college campuses. To Wilkinson's father, Yale was unsuitable; in his mind, Princeton was “the northernmost promontory where a Virginian could go and still maintain respectability.”⁴ New Haven does prove to be a long way from home; it is there that Wilkinson's unquestioned devotion to his origins gives way to ambivalence, and there that he internalizes how “[r]ace was inextricably interwoven with the

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1 J. HARVIE WILKINSON III, ALL FALLING FAITHS: REFLECTIONS ON THE PROMISE & FAILURE OF THE 1960S 97-98 (2017).

2 *Id.* at 102.

3 *Id.*

4 *Id.* at 6.

venerable South.”⁵ His first instinct is to mask his Southern roots and resolve “never to look back.”⁶ But like many other Southern exiles before him, Wilkinson ultimately returns to Virginia, no longer the boy he was when he left. He does so with eyes open and with a professional outlook shaped by his educational experience, forgoing opportunities for wealth in favor of a career dedicated to civic engagement and public service, including as a law professor, journalist, and Justice Department lawyer, and finally as a federal judge.⁷

Wilkinson returns to the South prepared to grapple with her failings, while also yearning for the virtues that he was taught to revere—duty, honor, country, character, courage, trust, and truth—virtues he posits might still be reclaimed as national values without the tarnish of racial inequality. On this front, Judge Wilkinson professes to part ways with his college contemporaries, lamenting that for 1960s activists and their progeny, only an all-inclusive denunciation of his past would suffice. As Judge Wilkinson puts it, “[t]o find good in the past was to brand oneself reactionary.”⁸ But here he grasps the nettle, and probes whether the indisputable benefits of 1960s activism could have been achieved without giving way to political puritanism and more destructive methods of protest.

“At what cost,” is a refrain that punctuates Judge Wilkinson’s narrative, and by his measure, lamentable (and lasting) damage was done to political debate as the 1960s progressed. As he puts it:

One can respect the real accomplishments of the Sixties and still know that the decade’s sum of campus rancor was nothing less than tragic. . . . When we survey the harsh, mistrustful culture that destroys the remnants of our sense of community, it is impossible not to see the seeds of incivility that were planted in the 1960s.⁹

Judge Wilkinson’s account of the escalating intolerance for the expression of conflicting viewpoints and the efforts to silence controversial (and sometimes outright distasteful) speakers is eerily familiar. He observes that the “irony was that those who rightly challenged the assumptions of others became slowly more indignant at any challenge to their own. . . . [S]chools of thought that turn intolerant rarely start that way.”¹⁰

The rise of censorship on Yale’s 1960s campus is a cautionary tale for those concerned today about student groups empowered by their universities to police the boundaries of acceptable campus debate. The protestors of the 1960s undoubtedly had ample cause to disagree with the targets they put in the crosshairs—the segregationist Alabama governor George Wallace, for example.¹¹ But a dangerous precedent was set in fortifying Yale’s campus against the entry of a sitting Governor, rather than trying to win

hearts and minds through pointed questions and incisive critique. For Judge Wilkinson, as with so many others, the enduring value of his education included exposing him to perspectives he was denied in a cloistered, homogeneous upbringing. Judge Wilkinson urges us to ponder what is lost if a university campus is refashioned to mimic the homogeneity of one’s political community, and students are never taught to engage substantively with countervailing, and even offensive, ideas.

The malady of insularity now pervades more than the college campus. In *Coming Apart*, Charles Murray describes the increasing fragmentation of American society along socioeconomic lines—with Americans of different means divided along financial lines, but also living in separate neighborhoods and guided by disparate norms when it comes to religion, work ethic, and family values.¹² The book presaged what the past presidential election revealed—many Americans were shocked by the election results, in part because they were tone deaf to the concerns of their fellow citizens, or unable to comprehend the possibility of good faith disagreement on fundamental policy questions.¹³ Echoing Murray, Judge Wilkinson concludes that as “sub-cultures begin to predominate . . . the power of our unifying symbols fades.”¹⁴

Particularly now, Murray’s book has much to commend it, and it is valuable fodder for those interested in how to narrow the seemingly unbridgeable divides plaguing our segmented country. But instead, Murray himself is the latest target of campus censorship. Violent protests broke out at Middlebury College this March when he was slated to speak, primarily because of his controversial 1994 book *The Bell Curve*. The student protestors successfully shuttered the event and physically injured a professor in the process.¹⁵ Murray is hardly the only conservative scholar to come under attack by campus groups in the past few years. He shares that distinction with, among others, former Secretary of State Condoleezza Rice, who was pressured to back out of a commencement address at Rutgers University due to threatened protests.

You do not have to admire either of these speakers to favor their participation in campus debate. Liberal columnists like Frank Bruni are warning students of the “intellectual impoverishment” that comes from “purg[ing] their world of perspectives offensive to them.”¹⁶ When Nicholas Kristof wrote a column last May disapproving of liberal intolerance of ideological diversity on

5 *Id.* at 122.

6 *Id.* at 123.

7 *Id.* at 17.

8 *Id.* at 3.

9 *Id.* at 34.

10 *Id.* at 6.

11 *Id.* at 22-23.

12 CHARLES MURRAY, *COMING APART: THE STATE OF WHITE AMERICA, 1960-2010* (2012).

13 See Nicholas Kristof, *The Dangers of Echo Chambers on Campus*, N.Y. TIMES, Dec. 10, 2016, <https://www.nytimes.com/2016/12/10/opinion/sunday/the-dangers-of-echo-chambers-on-campus.html>.

14 WILKINSON, *supra* note 1, at 161.

15 For Murray’s account of the event, see Charles Murray, *Reflection on the Revolution in Middlebury*, AEIdeas, March 5, 2017, <https://www.aei.org/publication/reflections-on-the-revolution-in-middlebury/>.

16 Frank Bruni, *The Dangerous Safety of College*, N.Y. TIMES, March 11, 2017, available at <https://www.nytimes.com/2017/03/11/opinion/sunday/the-dangerous-safety-of-college.html>.

campuses,¹⁷ the backlash he received from his readers was so severe he felt compelled to write a second column about the “liberal blind spot” to defend his concerns.¹⁸ “As I see it,” he wrote, “we are hypocritical: We welcome people who don’t look like us, as long as they think like us.”¹⁹ Judge Wilkinson could easily be describing today’s political climate when he states that the “pseudo-education that preached but one right and moral view was quick to brand all others as not just incorrect but illegitimate, which brings listening to an end.”²⁰

The problem has only been exacerbated as political orthodoxy on college campuses has hardened; the academy, while it has always leaned left, is increasingly ideologically uniform.²¹ In 2015, a group of university professors of diverse political orientations formed the “Heterodox Academy,” devoted to the ideal that “university life requires that people with diverse viewpoints and perspectives encounter each other in an environment where they feel free to speak up and challenge each other.”²² One would think we could all agree on this goal—the fact that it needs defending is an alarming indication that viewpoint diversity is no longer a foundational premise of higher education. The mission statement of the Heterodox Academy calls to mind the Committee on Freedom of Expression, which was formed by Yale University in the early 1970s and headed by C. Van Woodward to investigate the embattled state of free speech on campus in the wake of the 1960s. The Committee ultimately issued a report advising that the free interchange of ideas must remain a tenet of the university, whose core function of disseminating knowledge cannot be fulfilled without it.²³ As others have pointed out, the report today feels especially “timeless and timely.”²⁴

Judge Wilkinson does not claim to have a ready solution, but he tells a story from which both conservatives and liberals can learn. Judge Wilkinson describes his enthusiastic involvement in the Yale Political Union, where he got to know future Secretary of State John Kerry. He explains that they both aspired to lead the Union, and that “together we hit upon a coalition ticket as the way to do it.”²⁵ The first year, Kerry would run for president,

with Wilkinson on the ticket as vice president. The next year, they would pursue the same strategy, but with Wilkinson running for president. “John would get his Liberal Party behind the ticket, and I would get the Conservative Party backing for it. . . . We each kept our end of the deal and things worked out as planned.”²⁶ The idea that two are stronger than one seems practically quaint, but there is something to emulate. Kerry and Wilkinson never became great friends, but by collaborating with the supposed enemy, they were both better able to advance their goals.

For the absolutists, Judge Wilkinson’s self-professed imperfections as a narrator will be disqualifying. He is Protestant, white, and he grew up in a privileged household. (Judge Wilkinson describes how his father gave him a gold watch and \$1,000 as inducement not to drink alcohol until age 21. Wilkinson kept his end of the bargain, to the amusement of his friends, and to humorous consequences when he indulged in his first legal bender on his twenty-first birthday).²⁷ In these admissions, Judge Wilkinson anticipates the critics who will say that he therefore oversteps in finding fault in the Sixties’ method of protest. Judge Wilkinson, like his father and his well-intentioned friends (including Justice Lewis Powell, for whom Wilkinson clerked) who championed civil rights in Virginia,²⁸ had the luxury of patience, while others did not.

But the notion that certain topics are the exclusive province of particular groups is another unfortunate symptom of divisive identity politics. The recent Whitney Biennial art exhibition featured an abstract painting by a white artist, Dana Schutz, of Emmett Till’s open casket. Meant to confront viewers with a reminder of a horrific chapter in American history marked by gruesome lynchings like Till’s, it instead sparked protest that the subject matter belonged only to African-American artists, and was off limits to Schutz.²⁹ What a shame that the protestors would prefer to amplify differences, rebuff cross-cultural empathy, and forgo an opportunity to educate the many visitors to the Whitney about Till in order to claim ownership over a historical event and what it represents. As Judge Wilkinson writes, “when ‘me’ and ‘my’ transcend ‘us’ as a country, it is impossible to think that all is well.”³⁰

In sweeping away the old virtues, the Sixties, Judge Wilkinson writes, left us adrift:

The values stolen were not the property of any race or party or philosophy or creed. They reside rather at the heart of human nature and at the core of nationhood as well. Without them we today lack personal or national identity,

17 Nicholas Kristof, *A Confession of Liberal Intolerance*, N.Y. TIMES, May 7, 2016, available at <https://www.nytimes.com/2016/05/08/opinion/sunday/a-confession-of-liberal-intolerance.html>.

18 Nicholas Kristof, *The Liberal Blind Spot*, N.Y. TIMES, May 28, 2016, <https://www.nytimes.com/2016/05/29/opinion/sunday/the-liberal-blind-spot.html?smid=tw-share>.

19 *Id.*

20 WILKINSON, *supra* note 1, at 34.

21 See Heterodox Academy, *The Problem*, <http://heterodoxacademy.org/problems/>.

22 Heterodox Academy, *About Us*, <http://heterodoxacademy.org/about-us/>.

23 The report was recently republished in a pamphlet, which, in addition to the report, includes a preface by George F. Will, an introduction by Nathaniel A.G. Zelinsky, and commentary by Judge Jose Cabranes and Professor Kate Stith. See *CAMPUS SPEECH IN CRISIS: WHAT THE YALE EXPERIENCE CAN TEACH AMERICA* (2016).

24 Nathaniel A. G. Zelinsky, *Introduction to the Woodward Report*, in *CAMPUS SPEECH IN CRISIS*, *supra* note 23, at 11.

25 WILKINSON, *supra* note 1, at 13.

26 *Id.*

27 *Id.* at 10-11.

28 *Id.* at 108.

29 Randy Kennedy, *White Artist’s Painting of Emmett Till at Whitney Biennial Draws Protest*, N.Y. TIMES, March 21, 2017, <https://www.nytimes.com/2017/03/21/arts/design/painting-of-emmett-till-at-whitney-biennial-draws-protests.html>.

30 WILKINSON, *supra* note 1, at 34.

and that's what makes our boats drifting in the Sixties' wake so sad.³¹

Pining for more cohesive nationhood, Judge Wilkinson finds himself in good company. In *The Fractured Republic*, Yuval Levin, with similar candor, urges that even national “[p]rogress comes at a cost, even if it is often worth that cost.”³² And like Judge Wilkinson, Levin quantifies that cost as the “dwindling [of] solidarity, cohesion, stability, authority, and social order,” and a “fracturing of consensus . . . [that] grew from the diffusion into polarization—of political views, of incomes, of family patterns and ways of life.”³³ For Levin, the answer is not to reclaim the past, but to demystify it, and to “work toward a modernized politics of subsidiarity—that is, of putting power, authority, and significance as close to the level of the interpersonal community as reasonably possible.”³⁴

But if Levin’s politics of subsidiarity is to have any content, courts cannot be the final battleground of the culture wars. In *All Falling Faiths*, Judge Wilkinson implicitly makes the case for judicial restraint (the primary topic of his last book, *Cosmic Constitutional Theory*), and for protecting law from “the consuming fires of zealotry.”³⁵ Since the late 1960s, the law has been Judge Wilkinson’s sanctuary. While liberals and conservatives alike might seek to embed certain deeply-held views in our Constitution, Judge Wilkinson warns that politicizing the law risks grave consequences.³⁶ As Judge Wilkinson explains, “law draws its life from assent, not coercion; from citizens who carry an allegiance to the legal order in their hearts.”³⁷ For him, law is the last refuge that “recognizes that no political creed has any monopoly on truth or wisdom, as much as the pious of every persuasion would have us think otherwise.”³⁸

Judge Wilkinson refuses to relent or accept the notion of an irretrievably divided society. *All Falling Faiths* is not, however, a scathing polemic. Instead, Judge Wilkinson has the temerity to extend an olive branch of moderation. Compromise might have been a casualty of the drastic measures deemed necessary to eradicate the scourges of American history that lingered into the 1960s and beyond, but it is past time to bind up old wounds. To restore the American spirit, reconciliation is in order. That cannot be done, Wilkinson suggests, without also engaging with American history beyond simply condemning it. We must do as Wilkinson has done: confront our collective past with unsparing honesty, without ignoring its virtues or papering over its vices.

And we must face the future as Judge Wilkinson has lived his life—with nuance, civility, and modesty.

31 *Id.* at 178.

32 YUVAL LEVIN, *THE FRACTURED REPUBLIC: RENEWING AMERICA’S SOCIAL CONTRACT IN THE AGE OF INDIVIDUALISM 1* (2016).

33 *Id.* at 2-3.

34 *Id.* at 5.

35 WILKINSON, *supra* note 1, at 96.

36 *Id.* at 71.

37 *Id.* at 91.

38 *Id.* at 96

